

No. 9/6/86-6Lab./11295.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s Haryana Distillery, Yamuna Nagar.

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,
AMBALA.

Reference No. 20 of 1985.

SHRI PAWAN KUMAR AND SHRI SAHIB SINGH, WORKMEN AND THE MANAGEMENT
OF THE MESSRS HARYANA DISTILLERY, YAMUNA NAGAR.

Present :—

Shri Karan Singh and Shri N.R. Munjhal, for workmen.

Shri R.L. Gupta, for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred, —*vide* clause (C) of sub-section (i) of section 10 of Industrial Disputes Act, 1947 referred the dispute between Shri Pawan Kumar and Shri Sahib Singh, workmen and the Messrs Haryana Distillery, Yamuna Nagar to this Court. The terms of the reference are as under :—

“Whether termination of services of Shri Pawan Kumar and Shri Sahib Singh, workmen is just and correct ; if not, to what relief are they entitled ?”

Both the workmen through their demand notices, dated 15th November, 1984 alleged that they had been working as casual labourers in the employment of Haryana Distillery, Yamuna Nagar but unfortunately their services were terminated on 13th September, 1984 without any reason. They have prayed for their reinstatement with continuity in service and with full back wages from the date of termination to the date of reinstatement.

Respondent management served. It appeared contested the dispute and contended that references of Shri Sahib Singh and Pawan Kumar have arisen out of demand notices dated 15th November, 1984. Copies of the same were received by the management. It was alleged that the management was required to submit reply to the demand notice but this court directed the workman to file statement of claim but the claim statements were never filed by the workmen and it was prayed by the workmen that their demand notices be treated as statements of claim. Replies to the demand notices were submitted by the respondent-management. Respondent-management appeared urged that the claimants used to be workmen to respondent and their services were terminated,—*vide* order dated 13th September, 1984. It was contended that a regular inquiry was conducted and the workmen were found guilty of misconduct, so their services were dispensed with. Both the workmen were duly charge-sheeted,—*vide* charge sheets dated 4th February, 1984 to which the claimants submitted their explanations dated nil received on 9th February, 1984. The explanations were found unsatisfactory. A domestic inquiry was ordered. Workmen were repeatedly asked to join the inquiry proceedings but they boycotted the inquiry proceedings. Thereafter, Shri Wazir Chand, Inquiry Officer proceeded *ex parte* against the workmen and submitted this inquiry report in which he held Shri Sahib and Pawan Kumar and others guilty of misconduct. On the basis of the same, services of the workmen were dispensed with.

Workmen filed replication through which they controverted the allegations of the management by saying that no proper and fair inquiry was conducted. It has been vitiated the order of the management terminating the workmen is illegal and unjust. They prayed for their reinstatement with continuity in service and with full back wages.

On the pleadings of the parties the following issues were framed :—

Issues

- (1) Whether the termination orders dated 4th September, 1984 and 13th September, 1984 are just ; if not, its effect ? OPM
- (2) Whether the inquiry proceedings vitiated as alleged in the replication ? OPA
- (3) Relief.

No other issue was claimed and pressed for. At the request of the parties, issue No. 2 was treated as a preliminary issue and evidence was invited on this very issue alone.

I have heard Shri N.R. Munjhal assisted by Shri Karan Singh for workmen and Shri R.L. Gupta, Legal Adviser of respondent management and have perused the oral and documentary evidence placed on the file. My findings on issue No. 2 are as under :—

Issue No. 2

Before switching on discussions on issue No. 2 I would like to make it clear that replications submitted on behalf of Shri Sahib Singh and Shri Pawan Kumar are neither signed by the workmen nor it has been signed by their authorised representatives, so in fact it is no replication in the eyes of Law. No doubt there is a clear law on this point that a replication is a part of pleadings but when a replication which is neither signed by the workmen nor it is signed by the authorised representative of the workman, nor it has been varified by either person in the circumstances such a document is merely a waste paper and has got no sanctity in the eyes of law. So such replications have to be rejected outrightly.

There are demand notices from the side of both the workmen through which they have alleged that they were in the service of respondent management. Their services were terminated without any reason what so ever. They have prayed for their reinstatement with other reliefs. Both the workmen were afforded opportunity to file statement of claim but they failed to do so. At the time of framing of the issues the respondent management did not point out that replication is unsigned, if this objection would have been raised at that time in those circumstances there was no necessity to frame issue No. 2.

Even at the time of arguments this objection was never raised by Shri R.L. Gupta, Legal Adviser for the respondent management.

Since I have recorded evidence on issue No. 2 and have heard arguments from both the sides. In these circumstances I feel it essential to record my finding on the basis of the evidence which has been led by both the parties.

Shri Sahib Singh workman examined himself as AW-1. He deposed that he joined service of respondent management in 1982. He used to get Rs. 400 P.M. He further stated that there is a union in the factory being formed at the instance of the owner of the respondent management. He was not a member of that union. Shri Gian Chand, used to be President of that union and Shri Maha Singh is a Secretary of that union. He received charge-sheet Ex. A-1. He submitted its reply which is Ex. A-2. He further deposed that Inquiry Officer was appointed, he participated in the inquiry proceedings. No copy of inquiry report was given to him. He obtained two days leave with the help of Shri Gian Chand, President and thereafter he went to see his sister. In his absence a dispute took place. He was not present at the time of that dispute, nor he participated in that dispute. Before terminating his services no notice, no retrenchment compensation, no opportunity of defence was provided to him. In cross-examination he deposed that he did not know whether he got mentioned in his reply Ex. A-2 that he has gone on leave. He further stated that Ex. M-1 and Ex. M-2 were received by him. He further stated that he did not join the inquiry proceedings because his case was pending in the Court. He also received letter Ex. M-3 which also replied by him. He denied his signatures on Ex. M-4 and Ex. M-5. He admitted his signatures on letter Ex. M-6 in Hindi. He admitted that he received termination letter Ex. M-7. He also deposed that after his termination he devotes his time on his agricultural land and also earns daily wages Rs. 10 per day. He further stated that nearabout 500 or 600 workers had been working in the respondent management. He denied his knowledge that the respondent management is governed by its standing orders. He denied the suggestion that he indulged in a dispute with Shri Gian Chand, President. He admitted that he joined inquiry proceedings. He again stated that the dispute took place outside the factory premises, so he did not prefer to join the inquiry proceedings.

Shri Pawan Kumar appeared as AW-2. He also made similar statement by saying that he was employed in the respondent management at the monthly wages of Rs. 450. There is a union of the labourers sponsored by owners of the respondent management. He is not a member of that union. He further stated that he received charge-sheet. He replied that Inquiry Officer was appointed but he boycotted the inquiry on the plea that a criminal case was pending against him. He prayed for his reinstatement. He further stated that he received Ex. M-1, M-2 and submitted reply Ex. M-3. He did not receive report of Inquiry Officer. He resides in his village after this termination and works on daily wages. He denied his knowledge about the standing orders of the respondent management,—vide which the respondent management is being governed and administered.

Shri Wazir Chand Sharma appeared as MW-1. He deposed on oath that he was appointed Inquiry Officer to go into charges against S/Shri Pawan Kumar, Sahib Singh and Sukhpal. On 15th March, 1984 Shri Sahib Singh and Shri Sukhpal appeared before him while Shri Pawan Kumar absented himself. Inquiry was posted for 29th March, 1984. Registered notices were issued to Pawan Kumar and Sahib Singh to appear on 29th March, 1984. On that day none of the workmen appeared. Thereafter inquiry proceedings were deferred for 14th April, 1984. On that day also all the three workmen absented themselves. Thereafter one more special opportunity was given to workmen to appear before him and join the inquiry proceedings on 30th April, 1984.

through registered A.D. as well as through U.P.C. but none of the workmen appeared to join in the inquiry proceedings. He recorded statements of the witnesses. Inquiry proceedings are Ex. M-10 which is contained in 14 pages it. Photostat copy of Ex. M-11 which bears his signatures. In cross-examination he deposed that he received a letter from the workman that the alleged occurrence on the basis of the same. They have been charge-sheeted and inquiry has been ordered took place outside the premises of respondent management, so they have got no concern with that incident. Due to that fact they are not willing to join the inquiry proceedings. Secondly, it was also contended by them that since a criminal case is pending against them, so no inquiry can be proceeded with against them. He further stated that at the time of holding inquiry he had gone through standing orders. Copy of the same is Ex. M-12. He further admitted that the occurrence took place at the distance of about three kilometer from the factory of the respondent-management and police case was pending. All the workmen were pressuring Shri Gian Chand, President of the union to give an call for strike. But he was not willing to accept their demand, so Shri Gian Chand was beaten by S/Shri Sahib Singh, Pawan Kumar and Sukhpal etc., who was taken to hospital where he was medically examined and thereafter police registered the case. Shri Gian Chand also reported this matter to the management on the basis of the same. Show cause notices were issued to workmen. They submitted their replies but their replies were found unsatisfactory. So Inquiry Officer was appointed and inquiry proceedings were conducted.

Shri Karan Singh and S. N.R. Munjhal urged that Shri Gian Chand, President of the union was beaten up by certain other person not by the workmen outside the factory premises, so the management was not empowered to appoint the Inquiry Officer nor it was competent to order an inquiry proceedings against the workmen. He cited AIR 1965 Supreme Court page 155 which reads that if a fighting took place outside the factory premises; in those circumstances the management has to show that, fighting must have rational connection with the employment of assailant and victim; if it is proved, in those circumstances the finding of domestic tribunal, in other words the Inquiry Officer is binding.

In this context it would be essential to refer here. Statement of Shri Gian Chand, President of workmen union before the Inquiry Officer who deposed that on 23rd January, 1984 at about 5.00 P.M. near the gate of the factory S/Shri Megh Singh, Sukhpal and Sahib Singh came to him told him that Shri Megh Singh has been retrenched who was employee of respondent-management. They prescribed him to give a call to the workmen to proceed on strike but he told them that the workmen are not ready to endorse their views, so he is unable to ask them to proceed on strike. Due to that fact they felt aggrieved and left giving him a threat to death. On 24th January, 1984 at about 7.45 A.M. he was coming towards factory on his Motor Cycle at Khajuri Road when he reached at drain of Shadipur at that time S/Shri Megh Singh, Sahib Singh, Issam Singh and Pawan Kumar appeared. They beat him with lathies. They stopped him on his Motor Cycle inflicted lathies blows. He raised noise. In the meantime Shri Mohinder Paul, Arun Kumar who were following him appeared there. They rescued him. All the aforementioned assailants ran away, while alerting a threat to death to him. He was taken to Hospital. Shri N.K. Gupta examined him medico legally. A case was registered. All the above persons were arrested. He reported the matter to the management also.

This statement of Shri Gian Chand has been corroborate by Shri Sahib Singh, Mohinder Paul, Sham Lal, Narinder Paul and Arun Kumar during the inquiry proceedings before the Inquiry Officer.

Since the workmen asked Shri Gian Chand, President of the workmen union to give a call of strike because Shri Megh Singh has been retrenched but Shri Gian Chand did not oblige him due to that fact Shri Sahib Singh caused him beating, which resulted in the inquiry proceedings and ultimately in the dismissal of both the workmen.

Shri R.L. Gupta cited in 1970 LABIC page 336 in which it has been observed at page 337 in para No. 1 that what the tribunal had to decide was not whether the incident happened outside the factory premises but whether that incident was an act which was subversive of discipline and had some rational connection with the employment of assailant and the victim.

He also referred to 1968 LLJ page 670 in which it was observed that if assault had connection with the employment of both the applicants and the other workers then clearly assault was one subversive of discipline. If his orderly behaviour or attack had some rational connection with the employment of the workmen and other workmen that would be an act of indiscipline and the dismissal was justified. In 26 FJR page 199 it was held that if the misconduct of attack etc. is outside the factory and only on account of private dispute then it may not be misconduct. In this regard the standing orders may be attracted. The applicant should be able to show that disorderly or roitious behaviour has some rational connection with the employment of the applicant and the victim.

In view of the above case laws referred thereto and facts of the present Industrial Disputes between he parties. It is evident from the evidence which came in the inquiry proceedings Ex. M-11 in which it has been made clear that Shri Gian Chand, President of workmen union was beaten by Shri Sahib Singh and Shri Pawan Kumar etc., for not giving a call for strike to the workmen because Shri Megh Singh had been terminated by the management. Since Shri Gian Chand did not oblige the workmen in those circumstances they caused him beating. No doubt it was outside the premises of the respondent-management. But in fact it had direct connection with the affair of the respondent establishment.

Shri N.R. Munjhal further argued that inquiry proceedings were by-cotted by the workmen on the ground that the criminal cases were pending against the workmen and up till the disposal of those criminal cases the Inquiry Officer should have stayed inquiry proceedings. He drawn my attention towards AIR 1966 J&K page 73 in which it was observed that if a criminal case is pending on the similar allegations departmental inquiry should be stayed. He further cited before me judgement of my Ld. Predecessor Shri I.P. Chaudhary the then Presiding Officer, Labour Court, Haryana, Faridabad in reference No. 75 of 1979 who also took similar view but Shri R.L. Gupta drawn my attention towards 1979, Vol. 1 LLJ page 94 case titled G. Ravinderam Nair and Chairman Kochin Port Trust in which it was observed that there is no bar in parallel proceedings before the criminal Court and before disciplinary authority. It was further held that even acquittal in a criminal case does not necessarily bar proceedings by the disciplinary authorities.

It was further observed that in criminal cases the Courts insist on a high standard of proof. In criminal cases charges have to be proved beyond reasonable doubt. While in the Departmental proceedings, preponderance probability of guilt is sufficient. Thereafter, to say that the acquittal in criminal case should always tie the hands of the departmental authority from proceedings against a delinquent is not to put the question of law correctly it was also held that mere apprehension in the mind of an employee facing a domestic inquiry cannot and will not constitute the element of bias to vitiate the inquiry.

He also referred to 1986 Labour and Industrial cases Vol-1, page 1281, case titled M.M. Rubber Company Ltd., Madras, Presiding Officer, Labour Court, Madras in that their lordship observed that domestic inquiry and criminal prosecution initiated against the workman in receipt of same act. Acquittal of workman of criminal Court, domestic inquiry can be proceeded with not withstanding acquittal.

So in view of the above case law referred thereto I rely upon 1979 Kerala High Court and 1986 Madras High Court which are the latest authority in which it has been observed that the parallel proceedings with the criminal proceedings can be launched even after the acquittal of the workmen in the criminal court does not bar the domestic inquiry.

In the present case both the workmen by-cotted the domestic inquiry proceedings, inspite of, fact that they were fully aware of that inquiry proceedings have been started against them because they have been properly served and they knowingly by-cotted the inquiry proceedings without any sufficient and reasonable cause.

Shri N.R. Munjhal also argued that second show cause notice was not issued to workmen before terminating their services of the workmen. Shri R.L. Gupta replied to this contention by saying that in the standing order of the respondent-management there is no such provision and more over on this point the management has also not led any evidence because Issue No. 2 has been tried as an preliminary issue. So this contention of Ld. Authorised Representative of the workmen does not carry any weight.

In view of my above discussion on facts as well as on law points I reach at the conclusion that one Megh Singh's services were terminated. Shri Sukhpal, Sahib Singh and Pawan Kumar etc. approached Shri Gian Chand, President of the union to give an call to the workmen to proceed on strike for termination of Shri Megh Singh but Shri Gian Chand replied that workmen are not going to obey him, so he could not oblige Shri Sahib Singh, etc. They left spot while threatening him and on next very day in the morning when Shri Gian Chand was coming to factory, he was beaten by lathies by the workmen and their associates. A criminal case was registered against them. Domestic inquiry was also ordered on the basis of domestic inquiry services of workmen were terminated. The objection raised by the workmen have been met fully in my discussion. I hold that even domestic inquiry can be proceeded with, during the pendency of criminal trial. Occurrence of causing beating to Shri Gian Chand has got direct link with the management and workman affairs. Shri Wazir Chand Sharma conducted domestic inquiry in a most proper and fair manner. Authorised Representative of the workman failed to establish any defect or any draw back in the domestic inquiry proceedings, so it is obvious that inquiry is fair and proper. It has not been vitiated on any account, so this issue is decided, in favour of, management against the workman.

Issue No. 3— Relief :

On the basis of inquiry report management correctly dispensed with services of workman. On the basis of my above findings I pass award regarding the dispute between the parties accordingly; holding that termination of services of S/Shri Sahib Singh and Pawan Kumar is just and correct.

If the workman have not been paid wages, in lieu of, notice period, retrenchment compensation, Bonus and earned leave wages, etc. be paid now.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

Dated, the 7th November, 1986.